

ORIGINAL

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022

EX PARTE OR LATE FILED

December 10, 1999

**BY HAND**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals - TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

RECEIVED

DEC 10 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Reconsideration of First Report and Order in CC Docket No. 98-147*

Dear Ms. Salas:

Allegiance Telecom, Inc. ("Allegiance") submits this *ex parte* letter in CC Docket No. 98-147 to comment upon the Commission's pending reconsideration of its *First Report and Order*.<sup>1</sup> Allegiance is a facilities-based carrier serving customers in nineteen markets. Allegiance has experienced significant delays in obtaining collocation arrangements from various incumbent local exchange carriers ("ILECs") around the country. To prevent these delays, Allegiance requests that the Commission promulgate specific national collocation intervals. In addition, Allegiance requests that the Commission clarify its rulings with respect to safety and security standards.

**National Collocation Intervals:** Although the Commission decided not to promulgate national collocation intervals in the *First Report and Order*, it did note the problems that competitive local exchange carriers ("CLECs") experience in seeking to collocate in a timely manner.<sup>2</sup> In fact, the Commission specifically found that CLECs are harmed by lengthy

---

<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-147, FCC 99-48 (rel. March 31, 1999) ("*First Report and Order*").

<sup>2</sup> *Id.*, at ¶ 54.

No. of Copies rec'd  
List ABCDE

0+1

collocation delays. On that basis, the Commission urged state commissions to institute defined collocation intervals.<sup>3</sup> While some state commissions have done so,<sup>4</sup> the vast majority have not. In the typical CLEC's experience, the process of collocating is unpredictable and lengthy.

In the absence of state rules, CLECs must rely upon their interconnection agreements to set collocation intervals. Unfortunately, CLECs lack the bargaining power to obtain helpful collocation intervals. Most interconnection agreements either omit intervals or set intervals that are so long as to be unreasonable (*e.g.*, 120 to 180 days). Compounding the problem, the intervals in interconnection agreements generally do not start until the ILEC notifies the CLEC that space is available, prepares a quote and receives payment from the CLEC for the first COBO payment, a process that allows the ILEC to tack an additional 30 to 45 days onto the intervals. Moreover, even when ILECs violate the intervals of interconnection agreements, CLECs have no recourse because the agreements lack penalties and obtaining specific performance on an agreement is time consuming.

Interconnection agreements also tend not to provide shorter intervals for virtual collocation as opposed to physical collocation. It is far more complicated to provision the latter as opposed to the former. Setting aside the obvious difference (being the construction of a cage), there is a greater likelihood that the ILEC will need to condition space for physical collocation (*e.g.*, provide HVAC, run new power leads, build walls, etc.). Virtual collocation, on the other hand, is much simpler because CLECs generally place their equipment in existing racks or equipment bays and take advantage of existing HVAC and power delivery systems. There are compelling reasons why ILECs can provision virtual collocation more expeditiously than physical collocation, yet many interconnection agreements are often blind to these distinctions and CLECs lack the bargaining power to negotiate more favorable provisioning terms.

To compensate for deficient interconnection agreements and the lack of state rules on this issue, the Commission should establish the following national minimum collocation intervals:

---

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.*, Investigation of Southwestern Bell Telephone Company's Entry Into the Texas interLATA Telecommunications Market, Project No. 16251, Order No. 55 Approving The Texas 271 Agreement (located at <http://www.puc.state.tx.us/telecomm/projects/16251/16251.cfm> Nov. 15, 1999); Bell Atlantic - New York Pre-Filing Statement, at 16-20 (filed in CC Docket No. 99-295 as Appendix C to the Section 271 application of Bell Atlantic) (providing for a 76 day interval for physical collocation and a 105 day interval for virtual collocation).

60 calendar days for virtual collocation and 90 calendar days for caged collocation.<sup>5</sup> The intervals should apply both to new applications and applications to expand existing collocation space. The Commission should enforce its national minimum collocation intervals by permitting affected CLECs to file complaints in the Rocket Docket, seeking damages where appropriate.

The Commission should also clarify that ILECs should not be permitted to start charging rent on collocation space until the space is actually usable. In August, Allegiance filed applications for physical collocation in 10 USWest wire centers in the State of Washington. In early September, USWest informed Allegiance that power would not be available in two of the wire centers until June 30, 2000, in three of the wire centers until March 30, 2000, in one of the wire centers until the end of February 2000 and in one of the wire centers until January 30, 2000. USWest gave Allegiance the option of either canceling the applications or proceeding with the construction of the cages to preserve its space in the power queue and begin paying rent upon completion of the cages, despite the fact that power would not be available for up to six months. Obviously, the space is of no use to Allegiance without power. ILECs should not be permitted to extend the collocation intervals by delivering space within the required intervals even though the space is effectively unusable because it lacks power.

National minimum collocation intervals are necessary to ensure that a national facilities-based carrier, such as Allegiance, can enter local exchange markets around the country without incurring the needless costs associated with protracted delay. The existence of national standards will eliminate the preferences that CLECs have to provide service in certain states due to the lack of defined collocation intervals. More importantly for the future of competition, the availability of standard collocation intervals also will enable national carriers to develop business plans that are sufficiently specific and reliable to attract and maintain capital financing. In short, creating national minimum collocation intervals will encourage the development of local competition across the country.

**Criminal Background Checks:** BellSouth requires CLECs to perform criminal background checks going back five years upon any employees who will have access to BellSouth central offices. Other ILECs, including Southwestern Bell, GTE and USWest, require CLECs to perform background investigations and drug tests on their employees who will have access to the ILECs' central offices. These requirements represent an invasion of privacy that is not reasonably necessary to protect the ILECs' central offices. These background investigations are

---

<sup>5</sup> Whatever minimum collocation intervals that this Commission sets should not control where state commissions have acted, or act in the future, to set specific intervals.

burdensome, serving only to increase the costs of collocators and delay the process of collocating. ILECs can protect their property adequately through less-intrusive measures, such as through the use of security cameras, card key readers, and sign-in requirements that are authorized by the Commission's rules. These measures enable ILECs to identify individuals violating their rules and, if necessary, refer specific cases to law enforcement authorities. The legal system serves as an adequate deterrent to behavior harmful to the ILECs' property. There is no need for ILECs to force collocators to engage in costly, burdensome background investigations of its employees. The Commission should prohibit such requirements in its reconsideration of the *First Report and Order*.

**NEBS Level 1 Safety Requirements:** In the *First Report and Order*, the Commission found that "NEBS Level 1 safety requirements are generally sufficient to protect competitive and incumbent LEC equipment from harm."<sup>6</sup> The Commission also concluded that "although an incumbent LEC may require competitive LEC equipment to satisfy NEBS safety standards, the incumbent may not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment that it locates in its premises."<sup>7</sup>

Certain ILECs have interpreted the Commission's rulings to mean that the NEBS Level 1 safety standards are only the minimum requirements that CLEC collocation equipment is required to meet. For example, GTE and USWest require CLEC equipment to meet NEBS Level 3 safety standards. In addition to NEBS Level 1 safety standards, Ameritech requires CLEC equipment to meet such "safety requirements as Ameritech may reasonably deem applicable to protect Ameritech's premises and equipment and other Collocator's equipment." To remove any uncertainty and ambiguity, the Commission needs to clarify whether it intended the NEBS Level 1 safety requirements to be a floor or a ceiling.

The Texas Public Utility Commission recently addressed the attempts of Southwestern Bell Telephone to subject CLEC collocation equipment to more stringent safety requirements than NEBS Level 1.<sup>8</sup> That Commission ordered SWBT to allow CLECs to collocate any

---

<sup>6</sup> *First Report and Order*, at ¶ 35.

<sup>7</sup> *Id.*, at ¶ 36.

<sup>8</sup> *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, Project No. 16251, Order No. 52 (September 8, 1999) (attached Matrix evaluating Section 10.1 of SWBT's Physical Collocation Tariff).

Magalie Roman Salas  
December 10, 1999  
Page 5

equipment that meets NEBS Level 1.<sup>9</sup> In doing so, the Texas Commission removed considerable uncertainty from the collocation process and allowed CLECs to avoid expending unnecessary resources to qualify their collocation equipment. This Commission should do likewise and clarify the *First Report and Order* by ruling that ILECs may not impose safety requirements upon CLEC's collocation equipment that are different from or more stringent than NEBS Level 1 requirements.

We would pleased to discuss the issues raised in this letter if that would facilitate the Commission's decision-making process. Please call us if the Commission needs additional information regarding the issues discussed herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Rindler".

Richard M. Rindler  
Antony Richard Petrilla

cc: Lawrence Strickling, Esq.  
Robert Atkinson, Esq.  
Margaret Egler, Esq.  
William Kehoe, Esq.  
Julie Patterson, Esq.  
Robert W. McCausland  
Mary C. Albert, Esq.

---

<sup>9</sup>

*Id.*